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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA **CV 2011-013843**

THE STATE OF ARIZONA ex rel. THOMAS C.
HORNE, the Attorney General, and THE CIVIL
RIGHTS DIVISION OF THE ARIZONA
DEPARTMENT OF LAW,

Plaintiff,

vs.

JOHN A. PORTER, DMD,

Defendant.

No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

(Nonclassified Civil)

Plaintiff, the State of Arizona, ex rel. Thomas C. Horne, the Attorney General, and the
Civil Rights Division of the Arizona Department of Law (collectively the "State"), for its
Complaint, alleges as follows:

INTRODUCTION

1
2 1. This is an action brought under the Arizona Civil Rights Act to correct an
3 unlawful employment practice and to vindicate the public interest.

4 2. Specifically, the State brings this matter to redress the injury sustained because
5 Defendant John A. Porter, DMD ("Dr. Porter") discriminated against Dian Rounds ("Ms.
6 Rounds") by subjecting her to a hostile work environment because of her sex, and retaliating
7 against her when she opposed conduct which she reasonably perceived to be discrimination in
8 violation of the Arizona Civil Rights Act, A.R.S. § 41-1463(B)(1) and A.R.S. § 41-1464(A).

JURISDICTION AND VENUE

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10 3. This Court has jurisdiction of this matter pursuant to A.R.S. § 41-1481(D).

11 4. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

PARTIES

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13 5. The Civil Rights Division of the Arizona Department of Law is an administrative
14 agency established by A.R.S. § 41-1401 to enforce the provisions of the Arizona Civil Rights
15 Act, A.R.S. § 41-1401 *et seq.*

16 6. The State brings this action on its own behalf, and on behalf of Ms. Rounds, as
17 provided by A.R.S. §§ 41-1481(D) and (G).

18 7. At all relevant times, upon information and belief, Defendant Dr. Porter was an
19 unincorporated entity doing business as a dental practice in Maricopa County, Arizona. Dr.
20 Porter maintained his place of business at 17100 E. Shea Blvd., Suite 450, Fountain Hills, AZ
21 85268.

22 8. At all relevant times, Dr. Porter was an employer within the meaning of A.R.S. §
23 41-1461(6)(a).

24 9. At all relevant times, Ms. Rounds was an employee of Dr. Porter within the
25 meaning of A.R.S. § 41-1461(5)(a).
26

1 10. The State is informed and believes and therefore alleges that Dr. Porter was legally
2 responsible for the acts or omissions giving rise to this cause of action and legally and
3 proximately responsible for damages as alleged pursuant to A.R.S. § 41-1481(G).

4 **BACKGROUND**

5 11. Ms. Rounds began working for Dr. Porter on or about March 15, 2006 as a dental
6 assistant.

7 12. Dr. Porter's sole sexual harassment policy is contained in an employment
8 agreement that Ms. Rounds was required to sign at the time of her initial employment.

9 13. Such policy states in full:

10 Sexual Harassment and Abusive Treatment:

11 It is agreed that if an employee or contractor feels that they have
12 been subject to sexual harassment, or other abusive treatment, they
13 will report their feelings to Dr. Porter or to another staff member
14 who will inform Dr. Porter. Failure to do so will result in loss of
recourse under the State and Federal Statutes.

15 14. Prior to her complaint of discrimination, Defendant promoted Ms. Rounds to
16 Office Manager.

17 15. While employed with Defendant, Ms. Rounds worked directly under the
18 supervision of Dr. Porter.

19 16. While employed with Defendant, Ms. Rounds was subjected to several incidents
20 of verbal and physical conduct of a harassing nature by Dr. Porter, including but not limited to
21 the following incidents.

22 17. On or around June 2009, Dr. Porter called Ms. Rounds a "bitch."

23 18. On or around September 2009, Dr. Porter told Ms. Rounds and another female
24 employee that he wanted hugs from them for his birthday, and then later requested the hugs in
25 exchange for their paychecks.
26

1 19. On or around November 2009, Dr. Porter slapped Ms. Rounds on her buttocks
2 when he ran into her at her chiropractor's office.

3 20. On or around April 2010, Dr. Porter told Ms. Rounds to cover up her face with a
4 mask and then asked another employee for a bag to put over Ms. Rounds' head.

5 21. On or around May 2010, Dr. Porter informed Ms. Rounds and another female
6 employee that he wanted them to wear bikinis and pull him around the parking lot in a sled
7 while he held a whip.

8 22. On or around June 7, 2010, Ms. Rounds complained to Dr. Porter, through her
9 legal representative, about the aforementioned harassing comments and actions by Dr. Porter,
10 and requested that he stop such behavior.

11 23. On or around June 9, 2010, Dr. Porter terminated Ms. Rounds' employment.

12 24. On or around July 22, 2010, Ms. Rounds timely filed a charge of discrimination on
13 the basis of sex and retaliation against Dr. Porter, and the Civil Rights Division commenced an
14 investigation of the charge.

15 25. At the conclusion of the investigation, the Civil Rights Division determined that
16 there was reasonable cause to believe that Defendant discriminated against Ms. Rounds by
17 subjecting her to severe or pervasive conduct which changed the terms and conditions of her
18 employment and created a hostile work environment because of her sex, female, and retaliated
19 against her for complaining of discriminatory treatment.

20 26. The Civil Rights Division issued its Cause Finding on June 22, 2011, and since
21 that time, the Division, Ms. Rounds and Defendant have not entered into a Conciliation
22 Agreement. The parties having thus exhausted their administrative remedies, the State is
23 authorized to file this Complaint pursuant to A.R.S. § 14-1481(D).

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STATEMENT OF CLAIMS

COUNT ONE

[Harassment in Violation of the Arizona Civil Rights Act, A.R.S. §41-1463(B)(1)]

27. The State re-alleges and incorporates by reference the foregoing allegations contained in this Complaint.

28. Under A.R.S. § 41-1463(B)(1), it is an unlawful employment practice for an employer to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of sex.

29. Defendant unlawfully discriminated against Ms. Rounds in violation of A.R.S. § 41-1463(B)(1) by subjecting her to severe or pervasive conduct of a harassing nature which changed the terms and conditions of Ms. Rounds' employment and created a hostile work environment because of her sex, female.

30. As a result of Defendant's discrimination and termination of Plaintiff, Ms. Rounds suffered monetary damages for which she should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

31. The State also is entitled to injunctive relief against Defendant's actions pursuant to A.R.S. § 41-1481(G).

COUNT TWO

[Retaliation in Violation of the Arizona Civil Rights Act, A.R.S. §41-1464(A)]

32. The State re-alleges and incorporates by reference the foregoing allegations contained in this Complaint.

33. A.R.S. § 41-1464(A) states that it is an unlawful employment practice for an employer to discriminate against any of its employees because the employee opposed any practice which is an unlawful employment practice.

34. Ms. Rounds complained to Dr. Porter and opposed conduct which she reasonably believed to be an unlawful employment practice under the Arizona Civil Rights Act.

35. Dr. Porter unlawfully discriminated against Ms. Rounds in violation of A.R.S. § 41-1464(A) and subjected her to a materially adverse employment action by terminating her because she opposed conduct which she reasonably believed to be an unlawful employment practice under the Arizona Civil Rights Act.

36. As a result of Defendant's unlawful retaliation and termination of Ms. Rounds' employment, Ms. Rounds suffered monetary damages for which she should be compensated in an amount to be determined at trial pursuant to A.R.S. § 41-1481(G).

37. The State also is entitled to injunctive relief against Defendant's actions pursuant to A.R.S. § 41-1481(G).

PRAYER FOR RELIEF

WHEREFORE, the State requests that this Court:

A. Enter judgment on behalf of the State, finding that Defendant unlawfully discriminated against Ms. Rounds in violation of the Arizona Civil Rights Act.

B. Enjoin Dr. Porter, his successors, assigns and all persons in active concert or participation with Dr. Porter, from engaging in any employment practice, including discrimination on the basis of sex and retaliation, that discriminates in violation of the Arizona Civil Rights Act.

C. Order Dr. Porter, his successors, assigns and all persons in active concert or participation with Dr. Porter, to create and enforce policies, practices and programs that provide equal employment opportunities for all his employees, and that eradicate the effects of his present unlawful employment practices, including but not limited to, policy changes and training.

1 D. Order Dr. Porter, his successors, assigns and all persons in active concert or
2 participation with Dr. Porter, to adopt and enforce an equal opportunity in employment policy
3 that prohibits sex discrimination and retaliation and that includes a procedure for reporting and
4 investigating allegations of retaliation as well as for sanctioning substantiated allegations of
5 retaliation.

6 E. Issue an Order authorizing the State to monitor Dr. Porter's compliance with the
7 Arizona Civil Rights Act.

8 F. Award the State its taxable costs incurred in bringing this action.

9 G. Award monetary damages to Ms. Rounds in an amount to be proven at trial.

10 H. Grant such other and further relief as this Court may deem just and proper in the
11 public interest.

12 Dated this 22nd day of July, 2011.

13 THOMAS C. HORNE
14 Attorney General

15
16 By 

17 Jennifer Larson

18 Ann Hobart

19 Assistant Attorneys General

20 Civil Rights Division

21 Attorneys for Plaintiff

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